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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,251	08/10/2001	Kevin J. Zwaert	MBHB 00-556-A	5656

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A. Blair Hughes  
McDonnell Boehnen Hulbert & Berghoff  
300 S. Wacker Drive, 32nd Floor  
Chicago, IL 60606

EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/10/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/928,251

Applicant(s)

ZWAERT ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 18-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 02 September 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 7 and 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 7, an antecedent basis for "the annular wall first end" should be defined. In regard to claims 11 and 13, as discussed in the previous office action, the cap first open end 70 does not include the claimed structure. It is the cap second open end 68 which includes an annular wall 71 with threads 72 (see page 10, lines 24-25). It appears that on line one of claim 11, Line 13 of claim 13, "first open end" should be --second open end--.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7-16 remain rejected under 35 U.S.C. 102(b) as being anticipated by Coombs. In regard to claim 1, Coombs discloses a liquid applicator comprised of a resilient bottle 12 adapted to hold a liquid and having an opening, a pin 30 having first and second openings and at least partially surrounding the bottle wherein the bottle opening is concentric to the pin second opening, a cap 13 including first and second

open ends wherein the open ends are arranged as claimed and an applicator holder 11. In regard to claims 2 and 3, Coombs discloses a roller applicator 21 positioned adjacent to the cap open end. In regard to claims 4 and 5, the bottle includes a threaded neck 33 between the hollow body and the opening thereof wherein the threaded neck engages a threaded inner surface of the pin. In regard to claims 7 and 8, the pin includes an annular wall having threads 32 thereon which mate with the threaded neck of the bottle and a shoulder (located beneath the threads 32, see Figure 3) dividing the first and second openings. In regard to claims 9 and 10, the Coombs device includes a plug 35 "associated" with the pin openings and having an outer diameter smaller than the diameter of the cap second open end. In regard to claims 11 and 12, the cap includes a threaded annular wall 29 which receives the threaded neck 31 of the pin. In regard to claims 13-15, as discussed supra, the Coombs device includes the claimed structure. In regard to claim 16, the bottle has an opening that is "large enough to allow the resilient bottle to be filled".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coobs. Although the Coombs reference does not disclose the specific material used to

make the pin or the dimensions of the bottle opening, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the pin can be made of any suitable material, including a rigid plastic and the bottle opening can be of any suitable size, including the claimed size, without effecting the overall operation of the device.

### ***Response to Arguments***

Applicant's arguments filed 9/2/03 have been fully considered but they are not persuasive. The Applicant contends that Coombs is not applicable since the bottle defined therein is not "resilient". Further, the Applicant indicates that the term resilient is defined in the specification as "resilient enough to return to its original form after squeezing". However, the claims do not include such a limitation. The claims merely call for a resilient bottle and the bottle disclosed by Coombs is, at least to some degree "resilient". Webster defines resilient as "capable of withstanding shock without permanent deformation or rupture" (See Webster's Ninth New Collegiate Dictionary, 1990). As the bottle in the Coombs reference is collapsible, it is considered to be able to "withstand shock without rupture" and is therefore considered to be resilient. Further, the specification merely points out that the bottle is "preferably" resilient enough to return to its original form after squeezing (see the sentence bridging pages 7 and 8). The term "preferably" implies that other structures can also be employed and the claims (as currently drafted) are in no way limited to a bottle which will return to its original form after squeezing. Regarding claim 17, the Applicant contends that the Coombs

reference is not applicable since it is not considered with filling the tube. However, no limitation regarding the filling of the tube is present in the claim. Claim 17 merely calls for an opening having a particular size and, as discussed supra, the Examiner maintains that the various elements of the Coombs device, including the bottle opening, can be designed to have any suitable dimensions, depending on the needs of the user, without effecting the overall operation of the device.

### ***Conclusion***


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW